

Exhibit D

[Page 1]

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PHILIP FEI, on behalf of : 07 Civ. 8785
himself and classes of :
those similarly situated, :
Plaintiff, :
-against- :
WEST LB AG, :
Defendant : Rule 30(b)(6)

Tuesday, March 18, 2008

Pretrial examination of LISA CARRO, held in the
offices of Outten & Golden, 3 Park Avenue, 29th Floor,
New York, New York, commencing at 9:05 a.m., on the
above date, before Mickey Dinter, Registered
Professional Reporter, Certified Shorthand Reporter
and Notary Public for the State of New York.

U.S. LEGAL SUPPORT
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Suite 1410
New York, New York 10119
212.759-.6014

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1 it relates to prior to my employment, but
2 I wouldn't necessarily say that I have all
3 the information.

4 Q. Are you qualified to speak to topic
5 number 4 which is, "Defendant's policies
6 and practices regarding recording hours
7 worked by Class Members"?

8 A. No.

9 Q. Are you qualified to speak to topic
10 number 5 which is, "Defendant's policies
11 and practices concerning payroll
12 procedures with respect to overtime
13 compensation"?

14 A. No.

15 Q. What is your title?

16 A. Executive Director of Human
17 Resources, Regional Head of the Americas.

18 Q. Have you been in that position
19 since November 2004?

20 A. No.

21 Q. What was your first position when
22 you started?

23 A. Director of Human Resources.

24 Q. For how long did you hold that
25 position?

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1 A. From November 2004 through
2 September -- I'm sorry, wait a minute.
3 November 2004 through April 2006.

4 Q. What happened in April 2006?

5 A. I was promoted to executive
6 director.

7 Q. Have you held any other positions
8 at West LB?

9 A. Yes. In September 2006, I was
10 promoted into overall responsibility for
11 Human Resources.

12 Q. Any other positions?

13 A. No.

14 Q. I believe you said that you worked
15 at the West LB office on the Avenue of the
16 Americas?

17 A. Yes.

18 Q. Is that the main headquarters of
19 West LB, New York?

20 A. In New York, yes, it's the primary
21 location.

22 Q. What are the other locations in
23 New York?

24 A. Actually, I don't believe that we
25 have any other space in New York. I

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1 believe we have been consolidated in that
2 building, basically.

3 Q. Previously, were there other
4 locations in New York?

5 A. There was an office across the
6 street. I don't know the exact address.
7 There was an office over on the east side,
8 a very small office, a subsidiary.

9 Q. Do you know when all the offices
10 were consolidated into one?

11 A. I don't know.

12 Q. Do you know when --

13 A. Within the last year; very recent.

14 Q. Was the consolidation of both of
15 those offices within approximately the
16 last year?

17 A. Yes.

18 Q. Are there any other West LB
19 locations in the United States?

20 A. Yes.

21 Q. Where are they?

22 A. There is an office in Houston.

23 Q. Where else?

24 A. There are no other offices.

25 Q. Is there an office in Chicago?

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1 A. Sorry. Yes, there is an office in
2 Chicago. West AM, another subsidiary.

3 Q. To whom do you currently report?

4 A. To the global head of Human
5 Resources.

6 Q. What is that person's name?

7 A. Carl Hines Grossepeclum. That's
8 G-R-O-S-S-E-P-E-C-L-U-M.

9 Q. Could you, just briefly, tell me
10 what your duties are?

11 A. I'm responsible for Human
12 Resources. All of the HR generalists
13 report to me. I'm responsible for the HR
14 function regionally of the HR people in
15 Brazil as well.

16 Q. Anything else?

17 A. That's a high-level review.

18 Q. What are the corporate titles of
19 employees of West LB?

20 MR. BASSEN: I would
21 object. I don't see how that is in
22 the scope of the notice.

23 THE WITNESS: The corporate
24 titles -- the corporate titles are
25 executive, manager, associate

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1 director, director, executive

2 director, managing director.

3 BY MS. NEILAN:

4 Q. When did West LB first start using
5 the corporate titles?

6 A. I don't know.

7 Q. Did West LB use these corporate
8 titles?

9 A. They were in effect when I joined,
10 yes.

11 Q. Do you know if these corporate
12 titles were in place in October 2001 until
13 November 2004?

14 A. I couldn't say for sure.

15 Q. Do you know if there were any
16 corporate titles at West LB used prior to
17 November 2004?

18 A. I'm not aware of any.

19 Q. Do you know who came up with these
20 titles?

21 A. I have no idea.

22 Q. What does the title "executive"
23 mean?

24 A. It doesn't have a meaning. It's
25 just a title.

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1 Q. What is it a title for?

2 A. It's a title for certain employees
3 who are at a lower level in the
4 organization. By "lower," I mean
5 secretaries, people in the mail room, not
6 necessarily professionals, what we
7 considered to be professionals.

8 Q. And are executives the lowest level
9 of employees at West LB?

10 A. It's the first title, the lowest
11 level title.

12 Q. Is there anyone who has a position
13 that is below a position of executive at
14 West LB?

15 A. In New York?

16 Q. Let's start with New York, yes.

17 A. No, not really.

18 Q. What about elsewhere in the
19 United States?

20 A. No.

21 Q. Anybody lower than the title of
22 executive?

23 A. Not that I'm aware of.

24 Q. Do all employees at West LB have
25 corporate titles?

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1 A. All employees in the United States
2 have corporate titles.

3 Q. So, you mentioned that secretaries
4 and employees in the mail room are
5 classified as executives, is that correct?

6 A. Yes. There may be others. That's
7 not a full list.

8 Q. Please give me the full list of all
9 types of employees that are classified as
10 executive.

11 A. I don't have a full list off the
12 top of my head.

13 Q. What employees do you know, sitting
14 here now, to be classified as executives
15 and mail employees?

16 A. There may be some people in the IT
17 department, some people in our Purchasing
18 Department. There may be others, but I
19 don't have a full list off the top of my
20 head.

21 Q. Are there any documents that list
22 which employees are classified as
23 executives?

24 A. Documents? There may be documents.
25 There may be reports, yes, that would list

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1 would determine the length of time it
2 would take.

3 Q. What if you just wanted to request
4 all active executives at West LB in the
5 United States?

6 A. I don't know. I don't run reports
7 all the time.

8 Q. Who runs reports out of that
9 system?

10 A. Our HRIS people. There's two of
11 them. One name is Jean D'Elena; the other
12 is Andreas Stempfle.

13 Q. Are there any documents that
14 describe what an executive is at West LB?

15 A. Not that I have ever seen.

16 Q. Are team assistants considered
17 executives?

18 A. Team assistants, yes. They are
19 primarily secretaries, but that's a
20 functional title.

21 Q. What does that mean, "functional
22 title"?

23 A. Within the HRIS system, there are,
24 what they call, functional titles which
25 are somewhat more descriptive than the

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1 corporate titles.

2 Q. What is the difference between a
3 corporate title and a functional title
4 other than that the functional title is
5 more descriptive?

6 A. Just basically that. A corporate
7 title is just a title. Different classes
8 of employees, different types of employees
9 doing different types of work can all have
10 the same title, same corporate title.

11 The functional title is
12 supposed to be slightly more descriptive
13 in terms of what the person actually does.

14 Q. So, apart from the secretaries and
15 team assistants, mail room employees,
16 maybe some IT department employees and the
17 purchasing department employees, are you
18 aware of any other executives at West LB
19 in the United States?

20 A. Not that I can think of off the top
21 of my head, but there may be others that
22 I'm just not, I'm just not remembering.

23 Q. And what are the functional titles
24 of the mail room employees?

25 A. I don't know.

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1 Q. What do the executives who work in
2 the mail room do?

3 A. Mail room employees, they do
4 different things. There are people that
5 actually deliver mail. There are people
6 who are, who play more of a facilities
7 role.

8 Again, I don't have a list
9 in front of me so I can't really speak to
10 the answer fully.

11 Q. If you had a list in front of you,
12 could you speak to the answer fully?

13 A. I could do a better job than what
14 I'm doing right now.

15 Q. Who are the executives in the IT
16 department?

17 A. I don't know. I don't have a list
18 of all employees in front of me, so I
19 don't know.

20 Q. If you had a list of all executives
21 in front of you, would you be able to tell
22 me who are the executives within the IT
23 department?

24 A. I might be able to tell you. It
25 would be easier for me if I had a list of

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1 Q. What do they mean?

2 A. A non-exempt employee is an
3 employee who is performing work that is --
4 well, there are a number of things but,
5 for the most part, that does not require
6 independent judgment necessarily. They
7 are really taking direction from someone
8 else. They are eligible for overtime.

9 Q. What about exempt?

10 A. Exempt employees are performing
11 work or responsibilities where they are
12 exercising independent judgment amongst
13 other things and they are not eligible for
14 overtime.

15 Q. Does West LB currently classify all
16 executives as non-exempt?

17 A. I believe all of our executives are
18 non-exempt.

19 Q. Since when has West LB classified
20 all executives as non-exempt?

21 A. The executives were, all executives
22 were evaluated, job descriptions were
23 evaluated. I believe it was prior to when
24 I got there. They started a project and
25 they reevaluated or finally reevaluated

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1 sometime around, I would say, May, June of
2 2005.

3 Q. Since when has West LB classified
4 all executives as nonexempt?

5 A. I believe since June of 2005.

6 Q. And how can you verify that?

7 A. I would have to go back to the
8 payroll system to verify it.

9 Q. So, is there any other place that
10 you can verify that information?

11 A. Yes, I would have to go back to
12 records, documents, associated with a
13 reclassification project that was done.

14 Q. What reclassification project was
15 done?

16 A. There was a project that started
17 before I got there where a consultant was
18 engaged. The consultant and our internal
19 counsel worked on a project to address
20 changes in legislation as well as to
21 review the classification of our
22 executives.

23 Q. So, since June 2005 has West LB
24 paid executives... strike that.

25 Since 2005, has West LB

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1 classified all executives as non-exempt?

2 A. I believe so.

3 Q. Does that mean since June 2005, all
4 secretaries, team assistants, have been
5 classified as nonexempt?

6 A. I believe so, yes.

7 Q. That means since June 2005, all
8 employees in the mail room have been
9 classified as non-exempt?

10 A. All employees, no. Not all
11 employees in the mail room, no.

12 Q. Are there some employees in the
13 mail room who are classified as exempt?

14 A. Yes.

15 Q. Who is that?

16 A. There is a mail room supervisor, I
17 believe, who is exempt.

18 Q. Do you know that person's name?

19 A. I don't.

20 Q. Since June 2005, has West LB
21 classified all executives in the mail room
22 as non-exempt?

23 A. Yes.

24 Q. Since June 2005, has West LB
25 classified all executives throughout the

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1 information that you are looking at?

2 A. I believe there is some sort of
3 indicator inside of payroll, but I
4 couldn't say for sure because we switched
5 payroll systems. So, depending upon the
6 timeframe, I would have to, maybe, use
7 more than one means to determine that.

8 Q. When you say "indicator," what do
9 you mean?

10 A. A field. A field in the system.

11 Q. So, the payroll system has some
12 sort of code or key that indicates whether
13 an employee is exempt or non-exempt?

14 A. I believe so. I believe there may
15 be something inside of the payroll system
16 to indicate that.

17 Q. Is that in the current system?

18 A. For certain in the current payroll
19 system; and I would guess there would have
20 been something, but I couldn't say for
21 sure since, again, I don't manage the
22 payroll system.

23 Q. When was the payroll system
24 changed?

25 A. The most recent time was just this

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1 past January and there was one time before
2 that where we switched payroll systems
3 which was prior to my joining West LB.

4 Q. What is the name of the current
5 payroll system?

6 A. ADP.

7 Q. What is the name of the payroll
8 system prior to that January 2008?

9 A. Ceridian.

10 Q. What is the name of the payroll
11 system prior to you joining?

12 A. I don't know.

13 Q. What happened in June 2005 that
14 West LB started to classify all executives
15 as non-exempt?

16 MR. BASSEN: Objection.

17 Asked and answered.

18 THE WITNESS: There was a
19 project that was initiated by
20 consultants and our internal counsel
21 to address changes in legislation and,
22 as part of that, they reviewed the
23 classifications of all of our
24 executives.

25 BY MS. NEILAN:

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1 Q. What is the name of the consulting
2 company involved in the classification
3 project.

4 A. Her name was Vivian Yost.

5 Q. What is the name of the in-house
6 counsel?

7 A. Gregory Lahey.

8 Q. Apart from those two individuals,
9 was anyone else from West LB involved in
10 the reclassification project?

11 A. Yes. A number of people in the
12 resource department.

13 Q. Who?

14 A. I was involved at one point. Greg
15 Reiber was involved. There may have been
16 others, but I'm not sure who else might
17 have been.

18 Q. Was Linda Shirley involved?

19 A. I don't think so.

20 Q. What about Amy Favetta?

21 A. She may have been involved. I
22 don't know for sure.

23 Q. What about Frank Canuto?

24 A. I don't think Frank would have been
25 involved in that.

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1 Q. As part of this reclassification
2 project, did West LB determine whether to
3 classify executives as exempt or
4 non-exempt?

5 A. Their job descriptions were
6 evaluated. The testing was done by the
7 consultants. It was reviewed by counsel
8 and, I believe, that many of them, didn't
9 say all of them, many of them were
10 reclassified as non-exempt.

11 Q. Was this a change in status prior
12 to June 2005?

13 A. I'm not sure I understand what that
14 question is.

15 Q. When you said that many executives
16 were classified as non-exempt after the
17 reclassification project, was that a
18 change in the classification status of the
19 executives prior to June 2005?

20 A. It was effective in June 2005.
21 They were notified probably in May,
22 May/June 2005.

23 Q. So, did the classification status
24 as exempt or non-exempt for executives
25 change in 2005?

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1 A. Yes, the classification status
2 changed in 2005.

3 Q. Prior to June 2005, did West LB
4 classify executives as exempt from
5 overtime?

6 A. Not all executives, no.

7 Q. Okay. Prior to 2005, did West LB
8 classify some executives as exempt from
9 overtime?

10 A. Yes.

11 Q. And were there any changes in the
12 job duties of executives before this
13 reclassification in June 2005?

14 A. I don't know. I would not be able
15 to say.

16 Q. So, you have no knowledge whether
17 the duties of executives from, prior to
18 June 2005, were different from their job
19 duties after June 2005?

20 MR. BASSEN: Objection as
21 beyond the scope of the notice for the
22 deposition.

23 THE WITNESS: I'm not aware
24 of whether or not they were.

25 BY MS. NEILAN:

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1 so in terms of adding new hires to the
2 list and people who it potentially
3 impacted, that was a role that I played.

4 Q. How did you know which hires to add
5 to the list of the individuals who were
6 hired to be reclassified?

7 MR. BASSEN: Objection.

8 That's not what she said.

9 THE WITNESS: Repeat your
10 question.

11 BY MS. NEILAN:

12 Q. How did you know which types of new
13 hires to add to the list of individuals?

14 A. The job descriptions were
15 evaluated. If an individual was hired
16 based on a particular job description or
17 for a particular role, that's how they
18 were identified.

19 Q. Okay. So, then, these new hires
20 you could decide whether or not they
21 should be classified as exempt or
22 non-exempt based on the job description?

23 A. Based on their job description.

24 Q. West LB classifies individuals as
25 except or non-exempt based on job

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1 descriptions?

2 A. Yes.

3 Q. And what job descriptions did
4 Vivian Yost and Gregory Lahey examine
5 during your reclassification project?

6 MR. BASSEN: Objection.
7 Outside the scope of the deposition.

8 THE WITNESS: I couldn't
9 say. There are a number of -- I
10 couldn't say exactly what they were.

11 BY MS. NEILAN:

12 Q. Do you know any of the job
13 descriptions they examined?

14 A. There were many of them. I assume
15 that they were, you know, secretaries and
16 there were many. I know that there were
17 many job descriptions.

18 Q. Let's talk with respect to
19 executives. What job descriptions of
20 executives did the reclassification
21 project examine?

22 A. I can only speak based on my
23 knowledge of who was reclassified and, so,
24 for certain, they would have looked at
25 secretarial job descriptions. They would

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1 have looked at certain job descriptions
2 within the IT department. They probably
3 reviewed the mail room job descriptions
4 and there may have been others. In fact,
5 I know there were others, I just don't
6 know if they all were.

7 Q. And how could you figure out what
8 they all were?

9 A. I would have to go back to the
10 documents produced by the consultants and
11 reviewed by the attorney.

12 Q. What documents were produced by the
13 consultants?

14 A. The job-testing documents.

15 Q. So, the job-testing documents
16 include all the job descriptions, is that
17 correct?

18 A. Yes.

19 Q. And what other job-testing
20 documents were included?

21 A. I believe that the tests themselves
22 acknowledged the job descriptions.

23 Q. With respect to the job
24 descriptions themselves, did the
25 reclassification project issue you job

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1 descriptions or were they just evaluating
2 job descriptions that were in place?

3 A. The job descriptions, the job
4 descriptions may have been updated and
5 then evaluated. I'm not sure, actually.

6 Q. When did the reclassification
7 project start?

8 A. Before I got there. So, it would
9 have been, I believe, sometime in the
10 summer or fall of 2004.

11 Q. Who updated the job descriptions?

12 A. To the extent any job descriptions
13 were updated, I believe -- well, you know,
14 I really couldn't say because I'm not sure
15 exactly what the consultant did outside of
16 the testing.

17 Q. So, what did you mean when you said
18 a few moments ago that the job
19 descriptions may have been updated and
20 then evaluated?

21 A. It's possible that the job
22 descriptions were updated as a part of
23 that project. So, in other words, in
24 other words, the consultant would have had
25 to collect job descriptions and make sure

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1 that they were job descriptions for all
2 positions, make sure that they were
3 complete before she performs the job
4 testing.

5 Q. Did anyone update the job
6 descriptions?

7 A. I don't know.

8 Q. When you say that the job
9 descriptions may have been updated, you
10 don't really know, you are guessing about
11 that?

12 A. I said "may have." I said that
13 they may have been updated as a part of
14 the project.

15 Q. Sitting here right now, you have no
16 knowledge of the job descriptions actually
17 being updated as part of the
18 reclassification project?

19 MR. BASSEN: Objection.

20 THE WITNESS: I have no
21 idea.

22 BY MS. NEILAN:

23 Q. You do know that as part of the
24 reclassification project, West LB examined
25 the job duties, is that correct?

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1 A. Yes.

2 Q. And did West LB examine the job
3 duties for all executives at West LB?

4 A. I believe all executives.

5 Q. Who creates the job descriptions at
6 West LB?

7 A. It depends. HR usually works with
8 a manager to determine what a job
9 description looks like.

10 Q. You also said that there was
11 testing as part of the reclassification
12 project. What do you mean by that?

13 A. Job testing was applied to all of
14 the job descriptions.

15 Q. What does that mean?

16 A. Exemption testing.

17 Q. So, what did West LB do as part of
18 the exemption testing?

19 A. The consultants performed the
20 exemption testing in accordance with
21 guidance from the legal department. In
22 other words, the consultants and the
23 lawyer who was assigned to the project
24 worked together on the exemption testing.

25 Q. What exactly did the consultant and

1 the lawyer do?

2 A. I have no idea. I was not involved
3 in that portion of it.

4 Q. Do you know what factors the
5 consultant and the lawyer considered when
6 they were conducting the exemption testing?

7 MR. BASSEN: I'm going
8 to -- you are asking about the lawyer.

9 MS. NEILAN: If she has
10 knowledge of what factor the lawyer
11 and the consultant --

12 MR. BASSEN: Isn't that
13 privileged and work product?

14 MS. NEILAN: Are you
15 instructing her not to answer?

16 MR. BASSEN: First of all,
17 it's beyond the scope of this
18 deposition. If you want to take a
19 deposition about that, then we will
20 consider whether we would waive the
21 privilege.

22 MS. NEILAN: I'm asking the
23 question right now. It's within the
24 scope of this deposition.

25 Are you instructing your

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1 client not to answer the question?

2 MR. BASSEN: It is outside
3 the scope of the deposition and for
4 that reason, because it may be
5 privileged or may be work product, I
6 instruct her not to answer.

7 As I said, if you want to
8 take, have a different notice for a
9 different deposition on the merits or
10 the substance, then we will consider
11 whether we would waive the privilege.

12 MS. NEILAN: You understand
13 that in our deposition notice, topics
14 number 2 and 3 are classification and
15 reclassification as class members of
16 exempt and non-exempt?

17 MR. BASSEN: It asks for
18 the policies and practices for both
19 those things. Policies and practices.

20 The question you just asked
21 that I instructed her not to answer is
22 neither a policy nor a practice.

23 As I said, if you want to
24 have a different notice for a
25 different deposition, we will consider

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1 whether to waive the privilege.

2 MS. NEILAN: This is part
3 of today's deposition. You are
4 instructing her not to answer?

5 MR. BASSEN: I'm
6 instructing her not to answer for the
7 reasons I have said.

8 BY MS. NEILAN:

9 Q. As part of its reclassification
10 project, did West LB examine the duties of
11 each individual... strike that.

12 As part of the
13 reclassification project, did West LB
14 individually examine the duties of its
15 employees?

16 MR. BASSEN: Objection. I
17 don't understand the question.

18 THE WITNESS: Can you
19 repeat the question?

20 BY MS. NEILAN:

21 Q. As part of its reclassification
22 project, did West LB examine individually
23 the duty of each of its employees?

24 A. It was to be examined, the job
25 description of the employee.

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1 Q. So, did it examine each person
2 individually or just based on the job
3 description?

4 A. West LB would have looked at the
5 job descriptions. I don't know that they
6 would have looked at the individuals. You
7 can't determine by looking at an
8 individual whether or not they are exempt
9 or non-exempt.

10 MR. BASSEN: I'm taking a
11 break.

12 MS. NEILAN: I'm in the
13 middle of a line of questions here.

14 MR. BASSEN: We are taking
15 a break.

16 MS. NEILAN: This is
17 completely inappropriate.

18 MR. BASSEN: Good. Note it
19 for the record.

20 MS. NEILAN: This is
21 completely inappropriate.

22 MR. BASSEN: Good. I'm
23 taking a break. I need to use the
24 facilities. If that is unacceptable
25 to you -- apparently, that's the way

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1 this firm operates.

2 MS. NEILAN: Are you
3 finished? Go ahead and use the
4 facility.

5 (Recess taken.)

6 -----

7 (Back on the record.)

8 BY MS. NEILAN:

9 Q. Is Gregory Lahey in-house attorney
10 at West LB?

11 A. He was.

12 Q. When did he leave West LB?

13 A. I don't remember the exact date.

14 Q. Other than Gregory Lahey and Vivian
15 Yost, was there anyone else at West LB who
16 was involved in the reclassification
17 project?

18 A. The reclassification of the
19 executives, I don't think so.

20 Q. And as part of that
21 reclassification project, did they
22 interview any employees?

23 A. I don't know for sure. I would
24 guess that they would have, but I don't
25 know for sure.

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1 individuals, what do you mean?

2 A. Those particular documents they
3 used in order to evaluate the individuals'
4 duties and responsibilities.

5 Q. What document is that?

6 A. An exemption testing document.

7 Q. Where did this document come from?

8 A. I don't know where they got it from.

9 Q. Can you describe for me what the
10 exemption testing document looked like?

11 A. It looks like a form.

12 Q. What information is on the form?

13 A. I don't recall.

14 Q. Was it a checklist? Did they have
15 narrative responses?

16 A. I don't recall. I know there was
17 typed information on it, but I don't know
18 exactly what was on it.

19 Q. And do you know if that exemption
20 testing document was created internally at
21 West LB or came from someplace else?

22 A. I'm pretty sure it came from
23 someplace else.

24 Q. Do you know where it came from?

25 A. I do not know.

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1 Q. How do you know that they used this
2 exemption testing document?

3 A. I have seen it.

4 Q. How long is it?

5 A. I think it's more than one page.

6 I'm not exactly sure.

7 Q. And do you know where you can get a
8 copy of the exemption testing document?

9 A. At the moment, I don't know where
10 the exemption testing document is, but I
11 probably could get a copy of it if I look
12 for it.

13 Q. Does West LB still have a copy of
14 it?

15 A. I'm sure. If not on site, it might
16 be in storage.

17 Q. And do you know what Vivian Yost
18 and Gregory Lahey did when they actually
19 applied this exemption testing document...

20 Let me start again. Did
21 they apply the exemption testing document
22 to the job description itself?

23 A. They used a job description in
24 order to facilitate the testing.

25 Q. Did they just look at the job

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1 description and then complete the
2 exemption testing form, or is there
3 something else that they did?

4 A. I don't know. I didn't do it. I
5 wasn't with them when they did it. I
6 don't know.

7 Q. But you are aware they applied the
8 job description to the exemption testing
9 document?

10 A. I know that they used job
11 descriptions, yes.

12 Q. You know that they used an
13 exemption testing document?

14 A. I do.

15 Q. Apart from that, are you aware of
16 any other documents that they used to
17 perform the exemption testing?

18 A. Not that I'm aware.

19 Q. And do you know what factors were
20 listed for consideration on the exemption
21 testing document?

22 A. No, I don't.

23 Q. Did West LB consider the amount of
24 time that the executives spent performing
25 administrative tasks?

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1 MR. BASSEN: Objection.

2 This is neither a policy nor a
3 practice, so it's beyond the scope of
4 the Notice of Deposition.

5 THE WITNESS: I don't know
6 the details of what they evaluated. I
7 know that they had an exemption
8 testing document. I know that they
9 reviewed job descriptions. That's
10 really all I know.

11 BY MS. NEILAN:

12 Q. So, do you know if they evaluated
13 how much time executives spent on matters
14 of significance?

15 A. I don't know.

16 MR. BASSEN: Same objection.

17 BY MS. NEILAN:

18 Q. Do you know if they evaluated how
19 much time executives spent making
20 discretionary decisions?

21 MR. BASSEN: Same objection.

22 THE WITNESS: I don't know.

23 BY MS. NEILAN:

24 Q. You have no idea what they
25 evaluated?

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1 Q. Was the role that they were filling
2 listed in their job description?

3 A. The job description was a complete
4 description of their responsibilities.

5 Q. Did the H.R. person hiring an
6 individual after June 2005 know how to
7 classify them based upon their job
8 description?

9 A. Yes.

10 Q. Did you have any involvement in
11 exemption testing in 2004?

12 A. No.

13 Q. Did you ever issue any reports
14 regarding exemption testing?

15 A. Issuing reports? I believe I
16 updated a document with some numbers.

17 Q. What kind of numbers?

18 A. The number of individuals that were
19 evaluated, number of individuals that were
20 deemed exempt, non-exempt, et cetera.

21 Q. As part of its exemption testing,
22 did West LB find that it had improperly
23 classified executives as exempt?

24 MR. BASSEN: Objection.

25 THE WITNESS: I couldn't

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1 say that they determined that
2 individuals were improperly classified.
3 What I can say is that they had
4 determined that certain individuals
5 based on their responsibilities should
6 have been reclassified as non-exempt.

7 BY MS. NEILAN:

8 Q. As part of this reclassification
9 project, West LB determined that certain
10 executives were actually, indeed,
11 non-exempt employees?

12 A. West LB determined that individuals
13 who, up until that point in time, may have
14 been classified as exempt based on their
15 dues and responsibilities or reclassified
16 as non-exempt.

17 Q. Why did West LB make that
18 determination?

19 A. Based on the exemption testing.

20 Q. Did West LB find that in fact some
21 of these executives were not properly
22 classified previously?

23 MR. BASSEN: Objection.

24 Asked and answered.

25 THE WITNESS: As I said,

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1 based on the responsibilities that
2 were evaluated during the testing,
3 West LB determined that those
4 individuals should have been classified
5 as non-exempt.

6 BY MS. NEILAN:

7 Q. But they were not previously?

8 A. That they were not previously.

9 Q. Did West LB seek any opinions from
10 the Federal or State Department of Labor
11 with respect to its reclassification
12 project?

13 A. I couldn't say. I didn't
14 participate in the exemption testing, so I
15 don't know.

16 Q. Did West LB seek the advice of
17 outside counsel with respect to its
18 exemption testing?

19 A. I don't know. I don't know if they
20 did as it relates to executives
21 reclassification.

22 Q. So when did... strike that.

23 What company did the
24 consultant work for that West LB hired to
25 conduct the exemption testing?

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1 A. An independent consultant.

2 Q. Was she affiliated with any
3 corporate entity?

4 A. I don't think so.

5 Q. Apart from Miss Yost, did West LB
6 hire any other consultants with respect to
7 the exemption testing or the re-
8 classification project?

9 A. Vivian Yost.

10 Q. Apart from Vivian Yost, did West LB
11 hire any other outside consultant with
12 respect to the exemption testing on the
13 reclassification project?

14 A. Not that I'm aware of.

15 Q. Approximately, how many executives
16 did West LB determine that it had to
17 reclassify as non-exempt after the
18 reclassification project?

19 MR. BASSEN: Objection.

20 THE WITNESS: I don't know
21 the exact number.

22 BY MS. NEILAN:

23 Q. Can you give me your best estimate?

24 A. No, I really can't. I don't have
25 an idea what the number was.

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1 Q. Do you think it was five or fifty
2 or one hundred?

3 A. I don't think we have had a hundred
4 executives, so it was probably less than
5 one hundred. I couldn't say specifically
6 beyond that.

7 Q. About how many executives were
8 there at West LB in 2005?

9 A. I have no idea.

10 Q. You know it was less than one
11 hundred?

12 A. We only have five hundred people.
13 I know it was less than a hundred.

14 Q. West LB currently has five hundred
15 employees?

16 A. Less than five hundred now.

17 Q. What about in 2005, approximately
18 how many employees did West LB have?

19 A. Approximately, five hundred at that
20 point.

21 Q. And what is your best estimate of
22 the number of executives at West LB
23 currently?

24 A. Currently? This is a guess. It is
25 only a guess. I would say, maybe, forty.